

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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UNITED STATES OF AMERICA

v.

JOSE PENA a/k/a “Gucci”

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**Criminal Action No. 19-545 (SRC)**

**OPINION**

**CHESLER, District Judge**

On December 6, 2023, Defendant Jose Pena filed a motion for a sentence reduction pursuant to 18 U.S.C. § 3582. (ECF No. 35). The United States filed a response in opposition to Defendant’s motion on January 30, 2023. (ECF No. 37). This Court issued an Opinion and Order denying Defendant’s motion on February 28, 2023. (ECF No. 38, 39). Subsequently, on March 6, 2023, the Court received a reply from Defendant. (ECF No. 40). The reply was dated February 24, 2023, before the Court issued its February 28 Order.

The Court has reviewed the reply and concludes its arguments do not warrant modification of the February 28 Order. Many of the arguments in the reply have already been addressed by the Court. Other arguments present generalized concerns which cannot be the basis for a § 3582 motion. Still other arguments present constitutional concerns which cannot be brought in a § 3582 motion and will not be considered when brought for the first time in a reply. See United States v. Grier, No. 18-cr-00652, 2021 WL 791842, at \*5 (D.N.J. Feb. 26, 2021).

The Court will briefly address Defendant’s arguments relating to his tooth issue and his Vitamin D issue. Both lack merit. First, Defendant asserts his tooth issue has now been resolved. Therefore, it cannot constitute an extraordinary and compelling circumstance. Second, nothing in Defendant’s brief suggests his Vitamin D issue is serious enough to justify relief.

Even if Defendant managed to state an extraordinary and compelling circumstance, the § 3553(a) factors do not warrant a sentence reduction for the reasons stated in the February 28 Opinion. (ECF No. 38). Accordingly, Defendant's motion for a sentence reduction will remain denied.

s/ Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge

Dated: March 10, 2023